A.F.R.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Miscellaneous Appeal (C). No. 945/2007

Appellant

M/s Anaal Auto Mobiles, Supela, Bhilai, Tahsil and District Durg
Through Manager, Hemant Vaidya, son of R.R. Vaidya, aged 26 years, Resident of Sector-7, Street 10, Quarter No. 1/A, Bhilai Nagar, Tahsil and District Durg (C.G.)

(Owner of Motorcycle No. C.G. 07/L-1565)

Versus

Respondents

1. Ashish Kumar Shukla, aged 15 years, son of Nirmal Kumar Shukla, minor through natural guardian/father Nirmal Kumar Shukla, S/o R.A. Shukla, aged 39 years, R/o 4/7 Radhika Nagar, Supela Bhilai, Police Station Supela, Tahsil and District Durg (C.G.)

2. Avinash Sahu, son of Leelaram Sahu, aged 21 years, resident of Hathkhoj Parautai, District Durg (C.G.)

   (Driver of motorcycle No. CG 07/L/1565)

3. Bajaj Allianze General Insurance Company Limited, Head Office G.E. Plaza Airport Road, Yarvada Pune, 411006 (Mahashtra)

   Branch Office – 1st Floor Chauhan Complex, in front of Rajkumar College, near LML Showroom, Raipur (C.G.)
   (Insurer of Motorcycle No. CG 07/L-1565)

Misc. Appeal Under Section 173 of the Motor Vehicles Act

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Present : Shri J.K. Gupta, counsel for the appellant.

ORAL ORDER

(Passed on 10-08-2007)

Learned counsel for the appellant submitted that the default as pointed out by the Registry has been removed.

2. Heard on admission.

3. The appellant/owner is aggrieved by the award dated 20-02-2007 passed by 12th Additional Motor Accident Claims Tribunal (F.T.C.), Durg (hereinafter referred to as 'the MACT') in Claim Case No. 54/2006 whereby the learned MACT while awarding compensation of Rs.42,369/- in a case of personal injury has directed the respondent/insurance Company to pay first and recover the same from the owner of the vehicle by initiating execution proceedings.

4. Learned counsel for the appellant did not dispute that on 26.10.2004 respondent No. 2 herein possessed a learner's driving licence and was driving motor cycle No. CG 07-L-1565. It is also not disputed that the claimant suffered personal injuries on account of collusion with the aforesaid motor cycle driven by respondent No. 2 herein. The quantum of compensation awarded by MACT is also not in question in this appeal. It was also not disputed by the learned counsel for the appellant that at the time of driving the motor cycle, respondent No. 2 had not displayed the "L-Board" on the motor cycle and was not accompanied by a duly licensed trainer

5. Learned counsel for the appellant has urged that the owner of the vehicle had exercised due diligence and care before entrusting motor cycle to be driven by Avinash Sahu. Reliance was placed on ***Baghelkhand Filling Station and another*** **vs.** ***Brijbhan Prasad and others*****, 2006 (5) M.P.H.T. 83 (DB)** while contending that in the above

circumstances, the Insurance Company could not escape liability to pay compensation.

6. Having considered the submissions made by the learned counsel for the appellant and the undisputed facts, I am of the considered opinion that this appeal has no merit. In ***National Insurance Co. Ltd. vs. Swaran Singh and others,*** **(2004) 3 S.C.C. 297**, it was held as under:

> "**93**. The Motor Vehicles Act, 1988 provides for grant of learner's licence. [See Section 4(3), Section 7(2), Section 10(3) and Section 14.] A learner's licence is, thus, also a licence within the meaning of the provisions of the said Act. It cannot, therefore, be said that when a vehicle is being driven by a learner subject to the conditions mentioned in the licence (underlined by me), he would not be a person who is not "duly licensed" resulting in conferring a right on the insurer to avoid the claim of the third party. It cannot be said that a person holding a learner's licence is not entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's licence, the same would run counter to the provisions of Section 149(2) of the said Act."
>
> "**94**. The provisions contained in the said Act provide also for grant of driving licence which is otherwise a learner's licence. Sections 3(2) and 6 of the Act provide for restriction in the matter of grant of driving licence, Section 7 deals with such restrictions on granting of learner's licence. Sections 8 and 9 provide for the manner and conditions for grant of driving licence. Section 15 provides for renewal of driving licence.

> Learner's licences are granted under the Rules framed by the Central government or the State Governments in exercise of their rule-making power. Conditions are attached to the learner's licences (underlined by me) granted in terms of the statute. A person holding learner's licence would, thus, also come within the purview of "duly licensed" as such a licence is also granted in terms of the provisions of the Act and the Rules framed thereunder. it is now a well-settled principle of law that rules validly framed become part of the statute. Such rules are, therefore, required to be read as a part of the main enactment. It is also a well-settled principle of law that for the interpretation of statute an attempt must be made to give effect to all provisions under the rule. No provision should be considered as surplusage."

Thus, a learner's licence can be said to be effective only on the driver complying with the necessary requirement of Rule 3 of the Rules, 1989.

7. In view of the admitted facts that the driver had a learner's licence and had neither the "L-Board" on the motorcycle nor was accompanied by a duly licensed trainer, there was a clear breach of Rule 3 of the Central Motor Vehicle Rules, 1989 (henceforth 'the Rules, 1989'). Under these admitted circumstances, it was for the owner to lead evidence to prove that he had exercised due diligence and caution required under the Rules, 1989 before entrusting the motorcycle to a learner.

8. The case law cited by the learned counsel for the appellant is clearly distinguishable on facts and does not help the appellant in any manner. In that case, the driver was holding a license to drive a tanker but there was no endorsement on his license to show that he was

authorized to drive a goods carriage carrying goods of dangerous or hazardous nature to human life. Such endorsement was required to be made under Rule 9(3) of the Rules, 1989. It was held that the endorsement or its absence had no effect on the efficiency of the driver (underlined by me) and, therefore, there was no fundamental breach of the terms and conditions of the policy so as to exonerate the insurance company or to fasten liability on the owner of the vehicle to pay compensation.

9. In the present case, although the driver possessed a learner's licence, the owner was required under the Rules, 1989 not only to ensure display of the "L-Board" on the vehicle but also that the learner/driver is accompanied by a duly qualified and licensed trainer so that the possibility of mishap could be avoided while learning to drive and such instructor is sitting in such a position to control or stop the vehicle. The owner by allowing the vehicle to be driven in violation of the Rules created an extremely hazardous situation for the third party. Due to violation of Rule 3 of the Rules, 1989, it cannot be said that at the time of accident the driver/learner was having an effective driving licence to drive the motor cycle because the motor cycle was driven by a learner in clear violation of Rule 3 of the Rules, 1989. The motor cycle was, thus, driven by respondent No.2 in clear breach of the conditions mentioned in Rule 3 of the Rules, 1989 under which the learner's licence was granted.

10. The appellant, i.e., the owner of the vehicle did not enter the witness box to prove due diligence and care in allowing the motor cycle to be driven by a learner. The MACT has also observed in para 21 that "L-Board" was not displayed on the vehicle and a duly qualified and licensed trainer was also not accompanying the respondent No. 2. The MACT has recorded a finding that the driver/learner acted in a rash or negligent manner while driving the motor cycle at the time of accident. In this view of the matter, the MACT rightly held that there was a breach of policy condition. In the facts and circumstances of the case, since the insurer was statutorily liable under the policy of insurance to pay compensation, the MACT rightly ordered the

insurance company to pay the compensation first and to recover it from the appellant/owner of the vehicle by initiating execution proceedings.

11. In the result, this appeal, being devoid of merit, is dismissed at the stage of admission.

12. A copy of this order be sent to the MACT forthwith.

Sd/-
Dilip Raosaheb Deshmukh
Judge

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